

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

JASON R. BENDER,	)	
	)	
Plaintiff,	)	C.A. No. 06-00772 (GMS)
	)	
v.	)	
	)	
STEVEN ROBERTSON,	)	
	)	
Defendant.	)	

**NOTICE OF RECORDS DEPOSITION *DUCES TECUM*\***

TO: Records Custodian  
Delaware State Police Troop 7  
18006 Coastal Highway  
Lewes, DE 19958

PLEASE TAKE NOTICE that plaintiff will take the deposition, pursuant to a Subpoena *Duces Tecum* (a copy of which is attached hereto as Exhibit A), of the Records Custodian of the Delaware State Police on Monday, September 17, 2007 at 10:00 a.m. at the offices of Smith, Katzenstein & Furlow LLP, 800 Delaware Avenue, 10th Floor, Wilmington, Delaware 19899.

Dated: August 13, 2007

SMITH, KATZENSTEIN & FURLOW, LLP



Laurence V. Cronin (#2385)  
Etta R. Wolfe (#4164)  
The Corporate Plaza  
800 Delaware Avenue, 10<sup>th</sup> Floor  
Wilmington, Delaware 19899  
(302) 652-8400 (Phone)  
(302) 652-8405 (Fax)  
erw@skfdelaware.com

BRADY, RICHARDSON, BEAUREGARD &  
CHASANOV

Andre M. Beauregard (#2427)

401 Rehoboth Ave.

P.O. Drawer B

Rehoboth Beach, DE 19971

(302) 226-2270 (Phone)

(302) 226-2450 (Fax)

Attorneys for Plaintiff

\* *Duces Tecum*: The deponent is required to bring to the deposition all documents requested in the appendix to the subpoena attached hereto.

# EXHIBIT A

Issued by the  
**UNITED STATES DISTRICT COURT**  
 DISTRICT OF **DELAWARE**

JASON R. BENDER,  
 Plaintiff,

v.

STEVEN ROBERTSON,  
 Defendant.

**SUBPOENA IN A CIVIL CASE - *DUCES TECUM***

Case Number: 06-00772 (GMS)

**TO: Records Custodian  
 Delaware State Police Troop 7  
 18006 Coastal Highway  
 Lewes, DE 19958**

☐ **YOU ARE COMMANDED** to appear in the United States District Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

☒ **YOU ARE COMMANDED** to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.\*

PLACE OF DEPOSITION Smith, Katzenstein & Furlow LLP 800 Delaware Avenue, 10 <sup>th</sup> Floor Wilmington, DE 19801	DATE AND TIME September 17, 2007 AT 10:00 A.M.*
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☒ **YOU ARE COMMANDED** to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects): **See Appendix attached.**

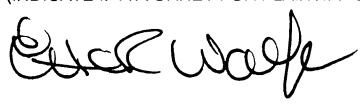
*\*Attendance at the deposition will be waived if the deponent produces the requested documents on or before September 14, 2007.*

PLACE Smith, Katzenstein & Furlow LLP 800 Delaware Avenue, 10 <sup>th</sup> Floor Wilmington, DE 19801	DATE AND TIME September 17, 2007 AT 10:00 A.M. *
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☐ **YOU ARE COMMANDED** to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
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Any organization not a party to this suit that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Federal Rules of Civil Procedure, 30(b)(6).

ISSUING OFFICER'S SIGNATURE AND TITLE (INDICATE IF ATTORNEY FOR PLAINTIFF OR DEFENDANT) Etta R. Wolfe (ID No. 4164)  Attorney for Plaintiff	DATE August 13, 2007
--	-------------------------

ISSUING OFFICER'S NAME, ADDRESS AND PHONE NUMBER  
 Smith, Katzenstein & Furlow LLP, 800 Delaware Avenue, P.O. Box 410, Wilmington, DE 19899  
 (302) 652-8400

(See Rule 45, Federal Rules of Civil Procedure, Parts C&amp;D on next page)

**PROOF OF SERVICE**

<b>SERVED</b>	<b>DATE</b>	<b>PLACE</b>
SERVED ON (PRINT NAME)		MANNER OF SERVICE
SERVED BY (PRINT NAME)		TITLE

**DECLARATION OF SERVER**

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on \_\_\_\_\_

DATE

SIGNATURE OF SERVER

ADDRESS OF SERVER

**Rule 45, Federal Rules of Civil Procedure, Parts C & D:**

(iv) subjects a person to undue burden.

**(c) Protection of Persons Subject to Subpoenas.**

(B) If a subpoena

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction which may include, but is not limited to, lost earnings and reasonable attorney's fee.

(i) requires disclosure of a trade secret or other confidential research, development, or commercial information, or

(ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or

(iii) requires a person who is not a party or an officer of a party to incur substantial expense to travel more than 100 miles to attend trial, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena, or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

(2)(A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

**(d) Duties in Responding to Subpoena.**

(3)(A) On timely motion, the court by which a subpoena was issued shall quash or modify the subpoena if it

(1) A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(i) fails to allow reasonable time for compliance,

(ii) requires a person who is not a party or an officer of a party to travel to a place more than 100 miles from the place where that person resides, is employed or regularly transacts business in person, except that, subject to the provisions of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place with the state in which the trial is held, or

(iii) requires disclosure of privileged or other protected matter and no exception or waiver applies, or

## **APPENDIX**

### **DEFINITION**

"Document" is used in the broadest sense of that term and includes, but is not limited to, any writing or record of any type or description, including laws, statutes, regulations, guidelines, directives, standards, manuals, agreements, contracts, correspondence, letters, telegrams, inter or intra-office communications (including electronic mail), memoranda, reports, studies, records, specifications, notes, notebooks, diaries, minutes, minutes of meetings, testimony, speeches, tabulations, analyses, plans, photocopies, graphs, descriptions, motion pictures, audio or video recordings of any type, publications, transcripts of telephone conversations, and any other retrievable data (whether encoded, taped, or coded electrostatically, electromagnetically, or otherwise), whether an original or copy (including, but not limited to carbon, handwritten, typewritten, microfilm, photostatic, and xerographic copies), including any non-identical copies (whether different from the original because of any alteration, notes, comments, or otherwise), together with any supplements or attachments thereto or enclosures therewith.

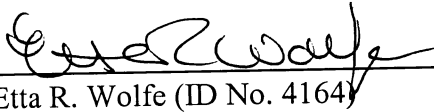
### **DOCUMENTS TO BE PRODUCED**

1. All documents referring or relating to Delaware State Police policy, procedures, and/or training regarding the use of deadly force, vehicle pursuit and use of force in effecting arrests.
2. All documents referring or relating to the events of January 16, 2005 involving the plaintiff and the defendant.
3. All personnel files referring or relating to Steven Robertson, including but not limited to, any and all disciplinary, training and/or internal affairs' files.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of Plaintiff's Notice of Records Deposition Duces Tecum was caused to be served this 13<sup>th</sup> day of August 2007 on the following by eFile:

Ralph K. Durstein, III, Esquire  
State of Delaware  
Department of Justice  
Carvel State Office Building  
820 North French Street  
Wilmington, DE 19801

  
Etta R. Wolfe (ID No. 4164)